

## THE ORIGIN OF INTERNET INTERMEDIARIES' LIABILITY FOR OFFENSIVE COMMENTS

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### Abstract

**Purpose** – to analyze the origin of internet intermediaries' liability for offensive comments.

**Methodology.** The theoretical methods (historical, comparative, analytical and systemic) are used in the article

**Findings.** The research results proved that the origin of internet intermediary liability for offensive comments should be classified as secondary liability the essence of which is that the defendant is held responsible for harm caused by the wrongful conduct of a third party. However, the term of secondary liability is as an umbrella term for various forms of internet intermediaries' liability such as accessory liability or indirect liability. The underlying question of secondary liability is conceptualized quite differently in a range of countries, because the secondary liability of online service providers remains formally governed by somewhat different standards under diverse national laws. On the other hand, in many countries courts analyze internet intermediaries' liability for offensive comments as direct liability under tort law for failure to conduct business in a particular way or a failure to take certain reasonable precautions. This is because of the unclear of the line between primary and secondary liability, and courts are not always careful about the precise basis on which liability is found. However, the ultimate result of this conceptually different approach to the question may not be hugely different in concrete cases. Finally, transnational practice is increasingly converging around systems of notice and takedown and on the imposition of some responsibility on intermediaries to stop wrongful conduct of third parties without finding them liable for the conduct of their users.

**Research limitations / implications.** The judgments of the European Court of Human Rights (hereinafter – ECHR) and the Court of Justice of the European Union as well as legal regulation and doctrine in the area of the origin of internet intermediaries' liability

for offensive comments are being analyzed in the article. The research is focused on legal sources of the period 2013-2018 as the most actual in contemporary society.

**Practical implications.** *Firstly*, the research results are useful for the law applying entities – courts, mediators, various state institutions and public organizations that directly settle the disputes, which have arisen between the Internet users about the unlawful comments. *Secondly*, the research results are certainly useful for the legislator so as to be able to create on their grounds the rules of law, which are maximally suitable for solving the problematic situations, which arise in the electronic space. *Finally*, this research is useful for business entities and all other Internet users, who: a) are seeking for defending or are defending their rights, which were violated by the third parties' comments (for example, in order to understand what prerequisites of civil liability of the website operator must be proved in the dispute, in particular how to describe the unlawful actions of the webmaster of the website, etc.); b) themselves are brought to account because of their own written comments or the comments of the individuals, for whose actions they are potentially liable.

**Originality / Value.** The selected research object, not only in the national context, but also in the context of the private law on the European scale is innovative and is not thoroughly investigated at the scientific level. After the judgments that were delivered by the ECHR on the cases of *Delfi AS v. Estonia* and *Magyar Tartalomszolgáltatók Egyesülete & Index.hu Zrt v. Hungary* the question of the origin of internet intermediary liability for offensive comments deserved much attention but still not enough. The question of the internet intermediaries' liability for offensive comments is conceptualized quite differently in a range of countries, thus this research is the step forward to detailed analysis of the responsibility of the website manager and its proper evaluation.

**Keywords:** internet intermediaries' liability, intermediary liability, liability for offensive comments, offensive comments, European Court of Human Rights, Court of Justice of the European Union

**Research type:** general review.